

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

KEVIN GRENS)	
v.)	
ILLINOIS AMERICAN WATER COMPANY)	
)	
Complaint as to billing/charges in Lemont, Illinois.)	
)	
PEOPLE OF THE STATE OF ILLINOIS)	Docket No. 05-0681
v.)	
ILLINOIS AMERICAN WATER COMPANY)	Docket No. 06-0094
)	
Investigation of failure to provide service on just and reasonable terms, and violation of the Public Utilities Act and Commission rules.)	Docket No. 06-0095
)	(Consolidated)
)	
VILLAGE OF HOMER GLEN)	
v.)	
ILLINOIS AMERICAN WATER COMPANY)	
)	
Complaint on as to billing/charges in Homer Glen, Illinois.)	

**Response of the People of the State of Illinois to
Illinois-American Water Company's Motion to Dismiss**

Pursuant to 83 Ill. Adm. Code 200.190(a), the People of the State of Illinois ("the People"), by and through Lisa Madigan, Attorney General of the State of Illinois, submit this response to the Motion to Dismiss of Illinois-American Water Company ("IAWC"). The Illinois Commerce Commission ("the Commission") should deny IAWC's Motion to Dismiss because the People's Complaint alleges sufficient facts to state a cause of action and the evidence available to date, which must be considered in light most favorable to the People as the non-movant, is sufficient to defeat a motion to dismiss. In support of this Response, the People state the following:

Background

1. The People filed an Amended Complaint with the Commission on March 8, 2006.
2. IAWC filed an answer on March, 29, 2006.
3. The People and the Village of Homer Glen each filed direct testimony in this proceeding on June 30, 2006.
4. Staff of the Illinois Commerce Commission (“Staff”) filed testimony on August 21, 2006.
5. An evidentiary hearing is scheduled in this proceeding on October 30 through November 2, 2006.
6. IAWC filed a Motion to Strike and Dismiss on August 11, 2006 under 83 Ill. Admin. Code 200.190(a). This section provides that a party may make a motion to request “a more sufficient pleading, a bill of particulars, the striking of irrelevant, immaterial, scurrilous or unethical matters” or the dismissal of the proceeding for “want of prosecution.” The rule requires that motions “based on matter which does not appear of record shall be supported by affidavit.” 83 Ill. Adm. Code 200.190(c). The IAW motion was not supported by affidavit and the motion is based on matters not in the record.
7. On a motion to dismiss, it is well established that all well-pleaded facts are taken as true for purposes of a motion to dismiss, and dismissal is proper only if no facts exist that would entitle plaintiff to relief. Senesac v. Employer’s Vocational Resources, Inc., 324 Ill. App. 3d 380, 257 Ill. Dec. 705, 754 N.E.2d 363 (2001). When ruling on a motion to dismiss, all pleadings and supporting facts must be interpreted in the light most favorable to the nonmoving party. Rodriguez v. Sheriff’s Merit Comm’n, 218 Ill.2d 342, 349, 300 Ill. Dec. 121, 843 N.E.2d 379 (2006).

The Motion to Dismiss is Premature Because the Record is Not Yet Complete

8. The pre-filed testimony in this proceeding is not the final and complete record of evidence. Even IAWC admitted that there is a “fair amount of discovery that’s going to come up after the Plaintiffs have filed their direct testimony.” Transcript (Tr.) at 43 (April 6, 2006). The evidentiary hearing will not be conducted until the end of October, and when the testimony and exhibits produced by all parties will be offered into evidence and witnesses will be available for cross-examination. Only after the evidentiary record is complete should the Commission consider whether dismissal is proper for any of the allegations in this proceeding. See ICC Docket No. 03-0494, Shah v. Illinois Bell Tel. Co., Order, Nov. 23, 2004, at 8 (failure to produce evidence hearing resulted in Commission finding that complainant’s requests were abandoned).
9. Unlike a court, which adjudicates a dispute between two private parties, matters before the Commission often involve issues that affect large numbers of people who take service from a public utility. For that reason, the Commission has liberal intervention rules, and its Staff often presents evidence as part of investigations and in response to rate requests. Unlike a court, where a party presents evidence in a live trial setting, in Commission proceedings evidence is presented in written form prior to the hearing, where evidence is formally offered and witnesses are cross-examined. When considering a motion to dismiss based on a lack of evidence, these processes should be taken into account so that the evidence of all parties is considered. In this docket, only the direct testimony of the complainants and the Company was served before the Motion to Dismiss was filed. Nevertheless, all evidence should be considered.

Evidence Already Produced by the Parties Supports the People's Claims

10. IAWC requests dismissal of charges that it failed to properly maintain water pressure and properly issue boil orders, paragraph 40(h) and related statements in paragraphs 37 and introductory paragraph 2 of the People's Amended Complaint. Motion to Dismiss, p. 4, paragraph 9 (a), (d), and (h). Although Mr. Rubin did not directly address boil orders, information regarding IAWC's maintenance of water pressure and issuance of boil orders has been offered by IAWC. IAWC Ex. 1.03, at pages 4-10. IAWC Exhibit 1.03 is a report issued by IAWC in which it states that in July 2004, the Illinois Environmental Protection Agency ("IEPA") issued an engineering evaluation which listed as a deficiency IAWC's ability to maintain a minimum pressure of 20 psi in its distribution system. *Id.* at 6. As a result of the deficiency, IAWC agreed to install 3 permanent and 9 temporary new pressure monitoring stations in May 2005. *Id.* The pressure monitoring stations monitor the effect of power fluctuations in IAWC's West Water Treatment Facility on the water pressure in its water distribution system. *Id.* *Id.* As a result of pressure drops, the IEPA advised IAWC to issue five separate boil advisories for the affected areas of the distribution system. *Id.* Since August 22, 2005 IAWC has been using a generator at its West Water Treatment Facility twenty-four hours a day to protect against drops in water pressure caused by power interruptions. *Id.* at 7. In addition, IAWC Ex. 1.03 indicates that the Company recently enhanced its communication of boil advisories to include immediate calls to city managers of the affected areas and other local officials and agencies, and is considering whether to notify the public via television screen subscript in order to accelerate the notification process. *Id.* There is clearly

evidence available to the record related to boil orders, and it would be premature to dismiss that allegation in the complaint at this time.

11. IAWC requests dismissal of those portions of the People's Amended Complaint that IAWC did not provided or make available a customer information booklet as required by 83 Ill. Adm. Code 280.200. Motion to Dismiss, page 4, paragraph 9(c) and (g).
12. IAWC admits that it is currently developing a customer information booklet. Verified Answer of IAWC to the First Amended Complaint of the People, p. 19, paragraphs 36, 40. In the company's direct testimony filed on August 11, 2006, IAWC provides a full explanation of its customer information practices, again stating it has not developed a customer information booklet. IAWC Ex. 1.0, pages 54 and 57. Accepting all inferences in favor of the People, as is required on a motion to dismiss, there is sufficient evidence available for the record and for trial showing that IAWC has not provided customer education booklets to applicants for service.
13. IAWC requests dismissal of 40(e), item (ii) on page 12 of the People's Amended Complaint that IAWC failed to assign sufficient personnel the duty of hearing in person any dispute by a customer". Motion to Dismiss, page 4, paragraph 9 (e).
14. In its verified answer to the People's Amended Complaint, IAW stated the following about the lack of in person dispute resolution:

. . . Illinois American Water investigates all customer complaints and ensures that the complaint is resolved and the customer is satisfied. Often, complaints are resolved by the call center customer representative. Sometimes, where a customer service representative cannot resolve a complaint, it is forwarded to a supervisory Account Dispute Resolution Team. In other cases, customers make complaints to the Commission, which are forwarded to Illinois American Water for resolution.

IAWC Answer at 6. There is no mention of anyone being available in-person at the local office to hear and resolve complaints as required by the Commission's rule.

15. The Village of Homer Glen filed testimony in this consolidated docket which directly addresses the experience of several IAWC customers in attempting to resolve disputes with the company. Deborah Finnegan testified that on August 24, 2005 she called to inquire about the supply charge on her August 2005 bill. HG Ex. 2.0 at page 2. She was on hold with IAWC for over a half-hour and when she finally spoke with an IAWC representative, the representative did not know how the charge was calculated, but promised to call her back with an explanation. Id. Mrs. Finnegan testified that she never received a call back from IAWC with an explanation. Id. In addition, Mrs. Finnegan also testified that she had a conflict with IAWC over the changing of her water meter. Id. at 4. On January 19, 2006, she received a phone call from IAWC informing her that her water meter needed to be changed. Id. However, it was not until March 11, 2006 that Mrs. Finnegan's water meter actually was changed. Id. at 5. During the almost two months it took for Mrs. Finnegan to have her water meter changed at IAWC's request, she testified that there were two attempts by Water Service to change her water meter, and IAWC had no record of either attempt. Id. at 5-6. Another consumer, Jim Jilek testified that he had a billing dispute with IAWC. HG Ex. 3.0 at page 1. The dispute related to a faulty meter installed by IAWC on June 4, 2005. Id. at 1-2. Mr. Jilek testified that IAWC informed him in November that someone would have to come out to inspect his meter, but no IAWC representative did so until January 13, 2006. Id. At that time, Mr. Jilek was informed that the meter was faulty and he will be billed for \$500, an amount that should have been billed to him in previous months. Id. After IAWC billed Mr. Jilek for \$413.79 on January 15, 2006, IAWC refused to credit him for that amount as they had promised to do for all Homer Glen accounts. Id. at 1-2. It was not until

February, after a call from the Homer Glen municipality and also after Mr. Jilek forwarded a map of the municipality boundaries to IAWC, that IAWC finally credited his account. *Id.* at 3. A third consumer, Debbie Litoborski, testified that she also had a dispute with IAWC over a new meter installed in her home on January 26, 2006. HG Ex. 4.0, Direct Testimony of Debbie Litoborski at page 1. During the process of resolving the issue, Mrs. Litoborski testified that IAWC did not maintain records of her previous phone calls and did not have records of servicemen coming to her home to read her meter. *Id.* at 2-3. Furthermore, Mrs. Litoborski testified that she was on hold for fifteen minutes before speaking to an IAWC representative's supervisor and eventually got cut-off when the supervisor attempted to transfer her call. *Id.* at 3. Finally beginning in May 2006, Mrs. Litoborski began to receive corrected bills for her water usage. *Id.* at 6. The delays and confusion in addressing consumer concerns demonstrated by these experiences is sufficient evidence to withstand a motion to dismiss the People's claim that IAW failed to assign sufficient personnel to address consumer disputes and complaints.

16. The People's complaint has been consolidated with the complaint of the Village of Homer Glen to avoid duplication of evidence and issues. The evidence submitted by the Village of Homer Glen provides support for the allegations made in the People's complaint, and consolidation was expressly allowed to avoid the need to duplicate such testimony.. Tr. at 14 (Feb. 17, 2006).
17. IAWC requests dismissal of those portions of the People's Amended Complaint that it sent premature or unjustified collection or shut-off notices to customers. Motion to Dismiss, page 40, paragraph 9 (b), (f). The People's initial data requests in this

proceeding revealed serious data quality issues with IAWC customer service, billing and metering records. AG Ex. 1.0, at page 6. In addition, Homer Glen witness Deborah Fennegan described how she received a shut off notice while she was disputing a bill with IAWC. Homer Glen Ex. 2.0 at 3. Homer Glen witness Debbie Litoborski also testified that she was contacted by the collections department of IAWC and told she had to pay a disputed bill in full, despite the fact that she was in contact with IAWC customer service representatives about the dispute. Homer Glen Ex. 4.0 at 5. Finally, IAWC witness Fredrick Ruckman testified that IAW puts accounts on a 30 day hold while a dispute is investigated. IAW Ex. 1.0 at 58. The inference is that after 30 days, IAW can take steps to collect amounts due or notify consumers of shut-off, regardless of whether the consumer is notified of the results of the investigation or is satisfied with it. This evidence is sufficient to overcome a motion to dismiss.

18. The record in this proceeding contains evidence on each charge IAWC seeks to dismiss. As the non-moving party, all pleadings and supporting facts must be interpreted in the light most favorable to the People. IAWC's Motion to Dismiss should be denied because facts exist which would enable the People to the relief they have requested.

WHEREFORE, the People of the State of Illinois request that IAWC's Motion to Dismiss be denied.

Respectfully submitted,
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Date: August 25, 2006

Verification

Susan L. Satter, states that she is a Senior Assistant Attorney General; that she has prepared the foregoing document; that she knows the contents thereof; and that to the best of her knowledge, information and belief, based upon reasonably inquiry, the contents are true and correct.

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Signed and sworn to before me
This 25 day of August, 2006.

